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THE LOS ANGELES BAR ASSOCIATION

# BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California



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**The Jonathan Club will be the new meeting place for monthly dinners, commencing with the dinner on Thursday, January 26, 6:15 p.m.**

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# Forty-Four Years of Service to Bar and Public

## BAR ASSOCIATION SUCCESSFULLY MEETS GREATEST TASK IN 1932. THE PRESIDENT RECITES ACHIEVEMENTS AND COMMENDS MEMBERS

By Robert P. Jennings, President

THIS issue of **The Bulletin** marks the forty-fifth year of the Los Angeles Bar Association, and the eighth of **The Bulletin** itself. Formed in 1888, with fifty members, the Association in its growth has kept pace with the City and County. This growth is well exemplified by a few statistics regarding routine activities of the Association's office during the past year.

During the year 1932, there were handled from the office of the Association 13,906 outgoing telephone calls. Incoming calls average about three for each outgoing call, making a total of approximately 55,624 calls over the Association's wire during the year, or an average of about 200 for each working day. This large number leaves out of consideration the multitude of calls handled from the offices of the President and the Secretary. The correspondence of the Association required nearly 8,000 letterheads in addition to the circular letters which were used.

It is interesting to compare these figures with those of three years ago. In 1929 the telephone calls aggregated 28,000, and the correspondence of the Association required 4,500 letterheads. This great volume of routine office work could not be taken care of except for the able and efficient administration of the Executive Secretary, Mr. J. L. Elkins, who, with the aid of two capable assistants, takes care of the administrative office under the direction of the Board of Trustees, with that tact, kindliness and ability which are so vitally necessary to the competent and skillful discharge of his duties.

### Members Met Extraordinary Financial Demand

These somewhat troublous times have not left the Association and its members unaffected. Lawyers have felt the pinch of economic adversity equally with other professions, and with business. Yet during the past year we were faced with unprecedented financial requirements. These requirements were mainly for two purposes. The Committee on Judicial Candidates and Campaigns was required under the By-laws to conduct two plebiscites and campaigns; one for the general election and one for the recall election. Also, the Association undertook as a public service and duty, the conduct of the recall of certain judicial officers. Never before in the history of the Association had it been faced with similar need for funds. The members rallied to the urgent necessities of the occasion. It is a splendid tribute to their generosity and unselfish public spirit and to their high devotion to a worthy cause, that they cheerfully contributed the sum of $10,800 for the purposes of the recall, and $8,194.50 for the purposes of the Committee on Judicial Candidates and Campaigns, or a total of nearly $19,000.00. In many instances these contributions meant a real personal sacrifice.

### Generous Contributions of Service

While money is a necessity for purposes such as this, yet it amounts to nothing and can accomplish nothing except as there is joined with it the unselfish service of the members of the Association who are charged with carrying on the work. The members of the Committee on Judicial Candidates and Campaigns, which during most of the year was headed by Mr. Wm. J. Hunsaker as Chairman, and the members of the Recall Committee with Mr. Raymond L. Haight as Chairman, generously gave enormous amounts of their time to the

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(City and County—Organized 1888)
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## William Jefferson Hunsaker

As The Bulletin is about to go to press, there comes the sad message of the passing of William Jefferson Hunsaker. The Bar has lost a friend and one of its most distinguished members. He had an intense interest in all measures calculated to elevate the standard of the Bench and Bar and to improve the administration of justice. He stood stalwartly for what his own high standard of integrity accounted right. His eminent position in the profession lent weight to the cause which he espoused.

He served the Los Angeles Bar Association in many capacities and was its President in 1894. He maintained to the end the same vigorous interest in the welfare of the Bench and Bar as in his more youthful years. During the past year he was Chairman of the Committee on Judicial Candidates and Campaigns. No one in larger measure had and deserved the admiration and respect of his fellows at the Bar and the love and affection of his friends. We extend to the members of his family our most sincere sympathy.

work with which these respective committees were charged, even to the detriment of their own private interests, and they deserve, and have received the thanks and lasting gratitude of the officers and members of the Association. Nor could their work have been successfully carried on except for the enthusiastic cooperation and labors of a multitude of the Association members whose effective efforts supplemented those of the committees.

### Committee Work

Space does not permit the mention of the work of all the committees. Reports from many of them either already have been, or soon will be, presented to the Board of Trustees and will be either printed at length or reported in **The Bulletin.** Mention should be made of the Arbitration Committee which constitutes a quasi-judicial tribunal to which may be presented controversies between attorneys or between attorneys and clients. It provides a means of disposing of such controversies usually without the publicity and rancor which sometimes develop in a proceeding in court. During the year 1932, thirty matters were presented to and considered by this committee. Awards were made in ten of them. The amounts involved in those cases where financial controversies were in issue ranged from $61.62 to $4,000.00.

### Efforts Dedicated to Matters of Peculiar Concern to Bar

I have stated in the past and I earnestly believe that whatever measure of success has attended the efforts of the Association, and whatever place of respect and influence it has attained in the community, are due largely to the fact that it has confined its activities through the years of its existence to those matters having to do with the courts, the Bar, and the administration of justice. There are other organizations which are peculiarly fitted to handle other civic problems but the matters to which the Association has dedicated its efforts are matters with which the members of the Bar are peculiarly concerned. Its useful influence will be in direct proportion to its support by the lawyers of this community. It performs, functions and fulfills purposes locally which cannot be performed by the State Bar. It is not too much to hope that the time will come when substantially all of the lawyers of this community engaged in active practice will be enrolled in its ranks. Thus its useful influence will be increased and magnified.

Former Chief Justice Taft in an address before the American Bar Association some years ago succinctly expressed this idea when he said:

> "The Bar if organized is an enormous instrument for the cultivation of proper public opinion with reference to subjects which are normally within the field of the Bar and the Bench and it should be a part of the duty of every lawyer to see to it that he makes that influence as strong as possible by organization and by contributing to organization."

and after adverting to the British Bar, which has behind it a long history of six hundred years of organization and accomplishment, he continued:

> "Now we haven't those things. You cannot build up over night an institution of six hundred years' standing, but you can frame organizations which shall represent the best opinion of the Bar, and those organizations, gentlemen, only continue to represent the best opinion of the Bar when the members of the Bar regard it as their conscientious duty to take active part in the conduct of those organizations. In pleading for such organizations we are not pleading for ourselves. We can get along; but it is in the interest of the public that these organizations should influence public opinion for the betterment of the administration of justice."

### Grateful to Members

I extend to those who have been elected as officers and members of the Board of Trustees for the ensuing year and to the members of the Association my earnest good wishes for a successful year of work and accomplishment, and I gratefully acknowledge the debt of gratitude which I owe to the lawyers of this community for their sympathetic encouragement and support and for their cheerful response to the numerous demands which I have been required to make of them.

January 11th, 1933.

# American Bar Association Goes on the Air

## SERIES OF RADIO BROADCASTS OVER NATION-WIDE NETWORK BEGINS FEBRUARY 12. COUNCIL ON LEGAL EDUCATION AND ADMISSIONS TO PRESENT OUTSTANDING PROGRAM OF SPEAKERS

A series of radio programs of universal interest and importance to the members of the Bar throughout the United States, sponsored by the American Bar Association, and arranged by its Council on Legal Education and Admissions to the Bar, will begin on Lincoln's birthday, Sunday, February 12, 1933. The hour and the stations will be announced at a later date.

**The Bulletin** gives below a list of the speakers and the subjects to be presented. The dates of the programs, following the opening address by the President of the American Bar Association, will be announced in the press, and also at the initial broadcast. Listen in on February 12th and hear the details of this series of unusual programs.

THE MOST notable collection of representatives of the legal profession ever to appear on a program, radio or otherwise, will be presented in a series of weekly broadcasts, over the Columbia network, beginning on Lincoln's birthday, Sunday, February 12. The hour of each weekly address will be announced in the opening program. The local station over which they may be heard will appear in the radio news of the local press from time to time.

### "The Lawyer and The Public"

The purpose of the series, which will be given under the title "The Lawyer and the Public," will be to inform the individual who has little or no contact with lawyers as a group concerning what they are trying to do to improve the functioning of law in society and to render better service to the public. It will seek the cooperation of the layman in putting through measures designed to make the administration of justice more speedy, more certain and more easily available to the average citizen. It will endeavor to bring home to him that reforms in legal procedure which attempt to modify a system built up through the long experience of years are necessarily slow and difficult to bring about.

It will point out the part in the work of reform which is being played by the law schools, by the American Law Institute, by such research organizations as the Institute of Law of Johns Hopkins University and particularly by bar associations. It will emphasize the necessity of high standards for admission to the bar, of efficient bar examination systems and of adequate machinery for discipline and disbarment. The success attained by the incorporated bar and the growth of the judicial council movement will be discussed as well as the necessity for improvement in our present methods of choosing our judicial officers.

### "You and Your Government"

The addresses will be made under the auspices of the National Advisory Council on Radio in Education. Mr. Robert A. Millikan, the distinguished scientist, is president of that organization, Mr. Norman H. Davis is chairman of the board and its vice-presidents include President Walter Dill Scott of Northwestern, President Livingston Farrand of Cornell and President Robert Hutchins of Chicago. This Council has been broadcasting weekly discussions this fall under the titles of "You and Your Government," "Labor and the Nation" and "The Economic World Today," and Mr. Levering Tyson, the director, estimates an average weekly radio audience of from two to two and a half million listeners.

The American Bar Association program has been arranged by its Council on Legal Education and Admissions to the Bar, the chairman of which, Mr. John Kirkland Clark who is also president of the New York State Board of Law Ex-

aminers, will be in charge of a question-and-answer period of approximately ten minutes following most of the addresses. Questions concerning any of the subjects discussed will be invited, and it is probable that the addresses will be reprinted by the University of Chicago Press and available for distribution at a small cost. These discussions, both because of the speakers who will give them and because of their subjects, will be of particular interest to members of the bar.

### Programs on Sunday

The broadcast will be made on Sundays, beginning the 12th of February, over a national hookup, at an hour to be announced later, and will continue at the same time each week for fourteen weeks.

Some additional names may be added but the program will be substantially as follows:

**Clarence E. Martin, President of the American Bar Association**—"The American Bar, Its Past Leaders and Its Present Aims and Ideals."

**Roscoe Pound, Dean of the Harvard Law School**—"Training for the Bar."

**George W. Wickersham, President, The American Law Institute**—"Restating the Law."

**John Kirkland Clark, Chairman, Section of Legal Education of the American Bar Association**—"The Lawyer's Education."

**John H. Wigmore, Dean Emeritus, Northwestern University Law School**—"Should the Public Distrust a Lawyer?"

**James Grafton Rogers, Assistant Secretary of State**—A Young Man in Search of a Profession Interviews Mr. Rogers on the Subject "Shall I Become a Lawyer?"

**Silas Strawn, Former President of the American Bar Association** and of the United States Chamber of Commerce—"The Lawyer and Business."

**Guy A. Thompson, Former President of the American Bar Association**—"What is the Bar Doing to Improve the Administration of Justice?"

**Henry W. Toll, Managing Director American Legislators' Association**—"Reforming the Law Through Legislation."

**Philip J. Wickser, Secretary New York Board of Law Examiners,** Hon. Theodore Francis Green, Governor of Rhode Island, and Robert T. McCracken, Chairman of the Philadelphia County Board of Law Examiners—"Sifting Candidates for a Lawyer's License."

**Newton D. Baker, President of the American Judicature Society**—"When Lawyers Speak with One Voice."

**Professor Karl Llewellyn of the Columbia University Law School,** Professor Walter Wheeler Cook of the Institute of Law of Johns Hopkins University, and Mr. Jerome Frank, Lecturer at the Yale Law School—"How the Law Functions in Society."

**Professor Felix Frankfurter of the Harvard Law School,** on a subject to be announced later.

**Judge Learned Hand of the United States Circuit Court of Appeals**—"How Far is a Judge Free in Rendering a Decision?"

**John W. Davis, Former Solicitor General of the United States,** Former Ambassador to Great Britain and Former President of the American Bar Association—"Selecting Judges."

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## DIRE NEED OF BAR SOLIDARITY

"I have rested the case for better bar organization upon the ancient appeal of self-defense. A bar that is threatened by an unprecedented increase in numbers and at the same time by a loss of its business, may justly be apprehensive of economic demoralization. It takes no delirious vision to see that increasing numbers and decreasing income may produce such competition as will overrule all ethical restraints as it has in some lines and in some localities already. To prevent such a condition transcends the mere right of self-defense, it becomes a duty of public service. A collectively impotent and individually predatory bar would be a collapse of our professional tradition that would stamp our generation as unworthy of its heritage. We are summoned to trial by ordeal. We dare not fail." (Robert H. Jackson, Vice-chairman of Conference of Bar Delegates, Jour. A.B.A.)

# The Nature of Oil Leases

## AND OF THE OWNER'S ROYALTY INTEREST. TO BE DETERMINED BY INSTRUMENT OF CONVEYANCE

By Hon. Leon R. Yankwich, Judge of the Superior Court, Los Angeles County

No question is of greater interest in California than the question of the nature of oil royalties. Until recently, there were few California decisions. However, several decisions had been made by Judges of the Superior Court of Los Angeles defining the nature of the royalty interest. Superior Judge Yankwich, in May, 1929, held (in Dabney-Johnston Oil Corporation, et al. v. Blott, et al.) that the owner's royalty did not convey an interest in oil in place. This was followed by other decisions of similar import, most important of which was Western Oil and Refining Co. v. Venago Oil Corporation, which has recently been affirmed by the District Court of Appeal, and which is discussed in the following paper.

The nature of the owner's royalty interest in an oil lease, has been a troublesome question. The difficulty has arisen from the manner in which courts have treated oil and gas. Treating it as a mineral, courts have held that it is a part of the realty, capable of absolute ownership. A statement of this rule which has been often quoted is contained in *Texas Co. v. Daugherty*, 107 Tex. 226, 176 S.W. 717. The Court there said:

"While they lie within the ground as a part of the realty is the ownership of the realty to be determined as to them, a mere license to appropriate as distinguished from an absolute property right in the corpus of the land? With the land itself capable of absolute ownership, everything within it in the nature of a mineral is likewise capable of ownership, so long as it constitutes a part of it. If these minerals are a part of the realty while in place, as undoubtedly they are, upon what principle can the ownership of the property interest, which they constitute, while they are beneath or within the land, be other than the ownership of an interest in realty?" (See, *A. W. Walker, Jr.: The Nature of the Property Interests in Oil and Gas in Texas*, 7 Texas Law Rev. 1, 539; 8 Texas Law Review, 438; 10 Texas Law Review, 291.)

### California View

This view has been criticized as implying a false analogy between land and solid minerals, on the one hand, and oil and gas on the other. (*Summers*, Oil and Gas, sec. 43, page 132). But it is the view adopted in California. Under it, petroleum and gas so long as they remain in the ground are a part of the realty. They belong to the owner of the land and are a part of it as long as they are on it, or in it, or subject to his control. When they escape and go into other hands, or come under another's control, the title of the former owner is gone. (*Duvall v. White*, 46 Cal. App. 305.)

Ordinarily, with us, an oil lease is a chattel real. It carries, so far as the lessee is concerned, the right to extract the oil and remove it from the premises. This right is for the term prescribed, a servitude. (*Graciosa Oil Co. v. Santa Barbara*, 155 Cal. 140.) For taxation purposes, our courts have refused persistently to apply to oil leases the provisions of law relating to taxation of personal property. (*Mohawk Oil Company v. Hopkins*, 196 Cal. 148; *County of Ventura v. Barry*, 207 Cal. 189; *Central Manufacturing District, Inc. v. Board of Equalization*, 82 Cal. Dec. 671.)

A well-known writer has divided oil leases into three types:

(1) Leases granting the exclusive right to produce oil and gas from a certain tract of land, with the posession of such portion of the land as may be necessary for the purpose;

(2) Leases granting, demising and letting certain land, for the sole purpose of extracting oil and gas; and

(3) Leases granting and conveying a

the oil and gas under a certain tract of land, with the exclusive privilege of entering thereon for the purpose of drilling and operating for oil and gas. (*Summers, Oil and Gas*, section 53).

Leases of the first group create an incorporeal and nonpossessory right, in the nature of a license, coupled with an interest which will not support ejectment in the lessee. (*Funk v. Haldeman*, 53 Pa. 229; *Kelly v. Keys*, 213 Pa. 295, 62 Atl. 911; *Payne v. Neural*, 155 Cal. 46; *Brookshire Oil Co. v. Casmalia, etc. Co.*, 156 Cal. 211.) Leases in the second group create a corporeal possessory estate in land, supporting ejectment in the lessee. (*Chicago & Allegheny Oil & Mining Co. v. United States Petroleum Co.*, 57 Pa. 83; *Barnsdall v. Bradford Gas Co.*, 225 Pa. 338, 74 Atl. 207; *Chandler v. Hart*, 161 Cal. 405; *Primmer v. Harris Oil Co.*, 51 Cal. App. 401. But see, *Kolachny v. Galbreath*, 26 Okla. 772, 110 Pac. 902.) In the third group, the prevailing doctrine is that the lease is a grant of a defeasible fee in the oil and gas in place. (*Texas Co. v. Daugherty, supra; Texas Pacific Coal & Oil Co. v. Fox*, (Tex. Civ. App.) 228 S. W. 1021; *Graciosa Oil Co. v. Santa Barbara, supra; Duval v. White, supra.* On the whole subject, see, *Summers on Oil and Gas*, sec. 53.)

### Character of Leaseholds

In a comparatively recent California case (*Hall v. Augur*, 82 Cal. App. 594, 599-600) the law as to the character of oil leaseholds is thus summed up:

"The rights of the parties to ordinary oil leases is well stated in *Brookshire Oil Co. v. Casmalia, etc. Co.*, 156 Cal. 211 (103 Pac. 927), wherein it is said, at page 215: 'In regard to such agreements it is said: 'The title is inchoate and for purposes of exploration only, until oil is found. If it is not found, no estate vests in the lessee, and his title, whatever it is, ends when the unsuccessful search is abandoned. If oil is found, then the right to produce becomes a vested right, and the lessee will be protected in exercising it in accordance with the terms and conditions of his contract.' (*Venture Oil Co. v. Fretts*, 152 Pa. 451, 460 (25 Atl. 732); *Steelsmith v. Gartlan*, 45 W. Va. 27, 34 (29 S.E. 978); *Lowther Oil Co. v. Miller etc. Co.*, 53 W. Va. 501 (97 Am. St. Rep. 1027, 44 S. E. 433); *Huggins v. Daley*, 99 Fed. 608 (40 C.C.A. 12); *Gadbury v. Ohio etc. Gas Co.*, 162 Ind. 14 (62 L.A.R. 895, 67 N.E. 261); *Eaton v. Allegheny Gas Co.*, 122 N.Y. 417 (25 N. E. 981); *Funk v. Haldeman*, 53 Pa. 242; *Union etc. Co. v. Bliven etc. Co.*, 72 Pa. 173; *Grubbs v. Grubbs*, 74 Pa. 33; Thornton on Oil, sec. 53)' However, it has been held by the California courts that an oil lease grants a vested interest where the entire consideration has been paid and there are no conditions in the lease requiring development of the property by the lessee. (*Chandler v. Hart*, 161 Cal. 405 (Ann. Cas. 1913B, 1094, 119 Pac. 516).) In *Taylor v. Hamilton*, 194 Cal. 768 (230 Pac. 656), it was held that an oil lease was more than a mere license and was to be considered as a lease of the premises for the purpose of drilling for oil and gas, which was subject to forfeiture under the terms of the lease on sufficient notice being given to the lessees of nonperformance by lessees of conditions contained in the lease." (See also, *Stone v. City of Los Angeles*, 114 Cal. App. 192, *Richardson v. Callahan*, 213 Cal. 683; *Barr Lumber Co. v. De Priest*, 83 Cal. Dec. 55.)

### Diversity of Opinion

Where the agreement by the owner is merely to sell the oil produced upon the land, ordinarily there is no right to enter upon the premises for the purpose of developing oil or of severing it from the realty: (*Richfield Oil Co. v. Hercules Gasoline Co.*, 112 Cal. App. 431.)

When it comes to determining the nature of a grant of the royalty interest, there is diversity of opinion. Some courts hold that a grant of the royalties, rents and income arising from the production of the oil from the land is a grant of a portion of the land. (See, *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187; 94 S.E. 472.) The other view is that royalty is personal property. (See, *Holmes Stake Exploration Corporation v. Schoregge*, 81 Mont. 604; 264 Pac. 388. See, *Walter L. Summers, Transfer of Oil and Gas Rents and Royalties*, 10 Texas Law Review, 1. See, Note, 29 A.L.R. 586.)

It is evident that conveyances by the owner of his royalty interest depend, to a certain extent, upon the nature of lease itself. If the lessor has conveyed merely a nonpossessory right, and shares in the royalty in the oil produced, the owner's reservation is of the same character as the right which he has conferred upon the lessee. It being merely a right to receive a portion of the oil as and when produced, it is personal property and does not convey the

right to a portion of the oil in place. If the conveyance is of a possessory right in land, or a grant of a defeasible fee in the oil and gas in place, the reservation of royalty is an estate in land. Much of the difficulty which has arisen may be traced to the fact that the courts have considered the various rights acquired more in the light of the nature of oil as a mineral, than in the light of the relationship created by the various instruments. (See, *Summers* on *Gas and Oil,* section 48.) The confusion is a good illustration of the failure to take into consideration "function," and the inadequacy which results from applying to relationships regarding property the abstract rules of ownership of the common law. The solution of the problem lies in the fact that, irrespective of theories of ownership of oil or gas, the nature of the royalty interest is to be determined by the particular instrument of conveyance and the rights conferred by it.

### Character of Royalty

So interpreted the royalty reservation may be either personalty or realty, depending upon the nature of the instrument. Two Ohio cases illustrate how the character of the royalty as either personalty or realty may be determined from the instrument itself, by analyzing the nature of the relationship created, without regard to any abstract theories relating to the nature of oil as a mineral.

In *Nonamaker v. Amos,* 73 Ohio St. 163, 76 N.E. 949, 4 L.A.R. (N.S.) 980, the lease provided that, in consideration of the grant therein made, the lessees will yield and pay to the lessor as royalty a certain share of "the oil produced and saved from the premises." Subsequent to the execution of the lease, the parties orally agreed, for a consideration, to a change in the percentage of the royalty.

The court held that the agreement to share royalty was personal property and, therefore, did not come within the Statute of Frauds, saying,

> "The lessees, by the written instrument, agreed to drill and operate for oil, and of what they would thus produce from the wells, and thereby sever from the realty, they were to yield and pay to the lessor one-sixth. Hence, when the parties entered into the parol contract as found by the lower court, they were not contracting for an interest in or concerning real estate, but for a division of personal property in proportions different from those named in the written lease. The royalty is an incident to the written instrument as a means of compensation to the lessor for grant and privileges therein conveyed."

A later case on the subject is *Pure Oil Co. v. Kindall,* 116 Ohio St. 188.

There, the owner of the land had deeded the oil in place to an oil company for development upon a royalty basis. Afterwards the heirs of the owner, before the expiration of the period of the lease, conveyed by deed the tract of land

> "excepting and reserving to the grantors herein, their heirs and assigns forever all of the royalty in the oil, gas and gasoline, produced from wells drilled and now operated on said first above-described tract of land, together with all rentals and other compensations or benefits arising therefrom; also excepting and reserving to said grantors, their heirs and assigns forever, one-half of all the royalty in all the oil, gas, and gasoline produced from wells that may be hereafter drilled upon said tract of land, together with one-half of the rentals or other compensations or benefits arising therefrom, except as herein otherwise provided; also excepting and reserving to the grantors herein, their heirs and assigns forever, all the royalty in the oil, gas, and gasoline produced from wells drilled and now operated on said second tract of land, above described, together with all rentals or other compensations or benefits arising therefrom; also excepting and reserving to the grantors herein, their heirs and assigns forever, three-fourths of all the royalty in the oil, gas and gasoline produced from wells that may be hereafter drilled upon said second tract of land, together with three-eighths of the rentals or other compensations or benefits arising therefrom, except as otherwise herein provided."

### "Rentals" and "Royalty"

The court held that this did not operate as a reservation and exception of the corpus of such oil and gas in place, title to which at the date of the deed, was in the oil company. The exceptions and reservations, the court ruled, had no other effect than to preserve a royalty interest only.

The court said:

> "The language, 'the rentals, or other compensations or benefits arising therefrom,' when read in conjunction with the

entire reservation, bears the same construction as attached to the word 'royalty.' The two words 'rentals' and 'royalty' are frequently used interchangeably. *Saulsberry v. Saulsberry,* 162 Ky. 486, 172 S.W. 932 Ann. Cas., 1816E, 1223; *Craing, Guardian v. West., Admr.* 191 Ky. 1, 229 S. W. 51; *Nelson v. Republic Iron & Steel Co.* (C.C.A.), 240 F. 285. Royalty is a certain percentage of the oil after it is found or produced, or so much per gas well developed and producing gas. Royalty is personal property, and is not realty.

"The principles controlling this case are, therefore those relative to the reservations and exceptions in a deed of conveyance of real property. It is well established that in Ohio oil and gas in place are the same as any part of the realty, and capable of separate reservation or *conveyance. Burgner v. Humphrey,* 41 Ohio St. 340; *Kelley v. Ohio Oil Co.,* 57 Ohio St. 317, 49 N.E. 399, 39 L.R.A. 765, 63 Am. St. Rep. 721; *Wonsetler v. Andrews,* 58 Ohio St. 551, 51 N. E. 168; *Northwestern Ohio Natural Gas Co. v. Ullery,* 68 Ohio St. 259, 67 N. E. 494; *Nonamaker v. Amos,* 73 Ohio St. 163, 76 N. E. 949, 4 L.R.A. (N.S.) 980, 112 Am. St. Rep. 708, 4 Ann. Cas., 170; *Chartiers Oil Co. v. Curtiss,* 14 C.C. (N.S.) 593, 594; affirmed *Curtiss v. Chartiers Oil Co.,* 88 Ohio St., 494, 106 N. E. 1053.

"The rule is well stated in Mills & Willingham's Law of Oil and Gas, p. 23, Section 15;

"In those jurisdictions which adhere to the doctrine of the ownership of oil and gas in place by the proprietor of the land upon which they lie, the oil and gas may be severed from the balance of the land, by grant or reservation, in the same manner as in the case of coal or other solid minerals. By such grant or reservation there is created a separate and distinct corporal interest, or estate, in the land, which is capable of ownership to the same extent and in the same manner as the surface."

### Rule of Construction

The court arrives at the conclusion as to the character of the royalty without the necessity of discussing the West Virginia rule under which a grant of royalty is a grant of the oil in place. The conclusion is based upon the wording of the instrument which shows an intention to divide the royalty *when produced.* The rule of construction which the court follows and which calls for the interpretation of a grant against the grantor, is a statutory injunction with us: *Civil Code,* section 1069.

In California, the decisions are few. However, they indicate a tendency to apply the same rules of interpretation to the instrument of conveyance. So we find:

If the conveyance be of moneys due as royalty, then, it is merely an assignment of money due: *Norton v. Whitehead,* 84 Cal. 263; *Butler v. S.F. Gas Etc. Co.,* 168 Cal. 32.

If the conveyance by the lessee is of a portion of the oil, gas or petroleum "produced, sold and saved," the instrument is a present sale of potential personal property. Such was the ruling in *Black v. Solano Co.,* 114 Cal. App. 170, where the court said:

> "That which is the subject of the deal is 'five per cent (5%) of any and all oil . . . produced, sold and saved.' There is here no hint of any attempt to pass title to the oil while it was a part of the realty, that is, before it was 'produced, sold and saved.' Nor is there a suggestion of a transfer to plaintiff of any right to go upon the land for any purpose. There was not created here any estate or interest in real property, nor was the title or possession of real property affected."

Under the provisions of the uniform sales act (Civil Code, section 1725) the instrument would be construed now as a contract of sale only.

The same case is also authority for the proposition that an instrument of this character, if "offered to the public," would be a security, within the provisions of the California Corporate Securities Act. (*Deering's General Laws,* (1931) vol. 2, p. 1926, Act. 3814, section 7, subd. 2.)

An instrument by which the lessor conveyed a percentage of his royalty was similarly designated as an instrument for the present sale of potential personal property. (*Merrill v. California Petroleum Corporation,* 103 Cal. App. 737). The assignment in that case was of a percentage of all "oil, gas and kindred substances *produced, saved* and *marketed* from said premises under said lease." The court held that, by the assignment, a joint tenancy in the oil produced was created between the assignor and assignees. (See also, *Jones v. Pier,* 70 Cal. App. Dec. 31).

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### Latest California Case

The most recent case on the subject is *Western Oil and Refining Co. v. Venago Oil Corporation,* 71 Cal. App. Dec. 840, decided November 22, 1932. In that case, the lessee,—holding a lease of the character of those I have designated as *group 1,* and which gave him the right to enter upon the premises and to prospect for oil and gas, assigned it to a corporation before oil was actually produced. In the meantime, he had assigned to various persons interests in specified units of oil and gas which might be "produced, saved and sold," under the terms of the lease. After production, the assignees of the units sought to establish their right, through assignment, to a definite portion of the oil produced.

It was held that the operating company which acquired the lease and later produced oil, took it free of any rights of the percentage holders. The rights of these percentage holders were declared to be merely the right to receive from their assignor a portion of the money to be received by him from the sale of the oil and gas produced. The court also ruled that the interest of the original **lessee in the oil before extraction** was not subject to hypothecation by way of a chattel mortgage. The court thus characterized the oil lease under consideration:

> "The rule appears to be that, under the ordinary oil and gas lease, the right of entry upon land for the purpose of exploring for oil vests in the lessee upon the execution of the lease, but the title to the oil and gas is inchoate, and does not vest until the oil and gas are reduced to possession. In other words, the oil and gas lease is to be distinguished from the ordinary lease in that the lessee, under such oil lease, does not acquire a vested interest in the oil and gas in place prior to its development, but only a right to enter and develop the well and remove the oil when so developed."

### Recent Federal Case

Another recent case of compelling interest is *In Re Lathrap,* 61 F. (2nd) 37, arising in California, and decided by the U. S. Circuit Court of Appeal, for the Ninth Circuit, where a similar conclusion,—as to the nature of the lessee's interest and of his assignment of "royalty interests," — was reached, in determining conflicting claims in bankruptcy. The "percentage holders" were declared not to have acquired any interest in the oil in place. The court held them to be co-adventurers of the lessee, and *not* his creditors.

In reaching these conclusions, the Federal Circuit Court adopted the views expressed in the California cases which had been decided prior to the date of its decision, (*August 12, 1932*). The following language in the opinion is appropriate to our discussion:

> "We find an instrument that purports to 'sell, assign, transfer and set over' to the holder 'a royalty interest equivalent to one per cent of the gross proceeds received from the sale of one hundred per cent of the oil and/or gas produced and sold' from a certain well 'now being sunk.'
>
> "Counsel for the appellants strenuously argue that these assignments in effect 'constitute a present sale to the assignee thereof of a portion of the oil and gas to be produced from the well.' But an examination of the instruments themselves discloses that they do not purport to convey any title to oil. The royalty interest is measured in terms of 'gross proceeds,' and not in terms of the commodity from which those proceeds are to be derived. Had a sale of oil been intended, it would have been a simple matter to have specified that the royalty interest conveyed was to be 'equivalent to one per cent of the oil or gas produced.' From the assignments as they now stand, it can be seen that a share in proceeds is transferred, and that there is a designation merely of the source from which the proceeds are to be derived. There is no attempt to transfer the corpus itself.
>
> "Before the oil was sold, title thereto resided in the bankrupt: after it was sold, it was vested in the purchasers of the commodity. These per cent. holders acquired title to the oil itself for not even a fleeting instant. They were not interested in oil; they were interested in proceeds. There are no provisions for delivery, but elaborate provisions for payment.
>
> "According to the weight of authority in California and according to the doctrine repeatedly enunciated by the Supreme Court of the United States, title to oil or gas in place cannot be transferred *in praesenti.* Nor can there be any transfer of such title, either present or prospective, without the accompanying right

(Continued on next page)

# Bench and Bar in Other States

**Georgia.** Proposed Constitutional Amendment for selection of Judges: At General election next before expiration of term any Judge of Supreme or Superior Courts who desires to serve another term, must be approved by the people. His name is placed on a separate ballot with the question: "Shall this judge be continued in office?" If a majority vote "no," he retires at the end of his term; otherwise, he is commissioned for another full term. Judges of the Superior Courts are voted on only in their respective districts.

When a vacancy occurs in the Superior Court, it is filled by the Governor, with approval of the Senate, from a list of five lawyers nominated by the members of the bar of the whole state, in a secret ballot; not more than one lawyer to be nominated from the same judicial district.

A vacancy in the Superior Courts is filled by the Governor, with approval of the Senate, from a list of three lawyers nominated by the members of the bar of the district where a vacancy occurs, in a secret ballot.

**Missouri.** The Missouri State Bar Association has submitted to its members a proposed bill, to be enacted by the legislature at its next session, for a self-governing State Bar. It is similar to the State Bar Act of California.

**Indiana.** At the January meeting of the Indiana State Bar Association a proposed bill, for the creation of an all-inclusive State Bar, will be presented and recommended for passage by the legislature. It is modelled after the California Act.

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*We should not forget the direct interest in the administration of justice that laymen have; in the last analysis they suffer most from the slow-moving courts. Moreover, laymen have no vested interests, except in unusual instances, in the administration of justice. They are not lawyers with the fear of antagonizing the judiciary, nor are they judges who hesitate to reconstruct the conditions under which they work. Moreover, the intelligent layman is able to cut through cobwebs that in some way frustrate the efforts of the lawyers.*

—Governor Franklin D. Roosevelt.

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**The truth is the selection of a judge is a little like that of a professor of the higher mathematics or of intellectual philosophy. Intimate knowledge of the candidate will detect the presence or the absence of the specialty demanded; the kind of knowledge of him which the community may be expected to gain, will not.**
—Rufus Choate.

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## NATURE OF OIL LEASES

(Continued from preceding page)

to go upon the land and extract the oil or gas. In the instant case, the appellants were granted no such right."

### Intention of Parties Governs

The result of the inquiry is not wholly satisfactory. Many questions depend upon the determination of the character of oil royalties. But there is so great a variety of instruments of conveyance in use, that no definite rule can be established other than that, ultimately, it is the intention of the parties, as disclosed by the particular instrument, which *does* and *should* govern in determining its character. This method of approach is pragmatic. It also gives promise of determining the relative rights arising from the royalty interest in the light, not of abstract speculations in regard to the nature of the oil, — but of concrete analysis of the relationships created by the agreement of parties. This is a sound foundation upon which to develop further the law on the subject.

# Paying Political Debts by Appointments

The following resolution was adopted by the Board of Trustees:

Section 14 of the Inheritance Tax Act of the State of California provides that the State Controller shall appoint, and may at his pleasure remove, one or more persons in each county in the state to act as inheritance tax appraiser therein. To the courts, under the provisions of Section 605 of the Probate Code, is delegated the duty to appoint three disinterested persons as appraisers in each estate, one of whom must be one of the inheritance tax appraisers provided for by law, and under the same section the court may, in its discretion, appoint an inheritance tax appraiser as sole appraiser of the estate. The duty to select an inheritance tax appraiser in each estate rests with the court and not with the State Controller. The County of Los Angeles, on account of the fact that departments of the Superior Court are located in Pasadena and Long Beach, has offered an opportunity to the State Controller not only to appoint persons to act as inheritance tax appraisers, but also to attempt to control the action of these outlying courts in their appointment of inheritance tax appraisers in probate estates.

In accordance with this policy of the State Controller, it appears that under date of August 4, 1932, he addressed a letter to the Judge of the Superior Court presiding in the Pasadena Department notifying him that he was assigning Helen Werner to the Pasadena Court as inheritance tax appraiser and was transferring Miss Elizabeth Kenney to the Los Angeles County Courts. This, in other words, was in substance an attempt to give a direction or order to the Superior Court in Pasadena that from that time forward that Court should appoint in all estates one certain individual as inheritance tax appraiser. It appears that members of the Pasadena Bar resented this attempt on the part of the State Controller to dominate and control the action of the Pasadena Court in the selection of inheritance tax appraisers and accordingly a committee of the members of that Bar called upon the State Controller at Sacramento regarding the matter, and in the course of their conference with him the State Controller stated to the members of this committee that he transferred Mrs. Werner to Pasadena not at her request but on his own initiative and in payment of a political obligation which he owed to her. This statement was set forth in a letter addressed by that committee to Honorable Ray L. Riley, State Controller, under date of August 27, 1932, and under date of August 31, 1932, Mr. Riley replied to that letter confirming unequivocally the foregoing statement.

WHEREAS, the foregoing recitals disclose that the appointment of inheritance tax appraisers by the State Controller has degenerated into a method of paying political obligations and has extended even to the point where the State Controller attempts to give orders to the judges of the Superior Court as to what appraisers they can or shall appoint; and

WHEREAS, appointments to the important position of inheritance tax appraiser should be made not for political purposes nor to pay political obligations;

NOW, THEREFORE, BE IT RESOLVED:

That an immediate and strenuous objection to such procedure and conduct by said Ray L. Riley, State Controller, be registered with the said Ray L. Riley and that he be called upon to withdraw any order or assignment which he may have made or attempted to make, having for its object the controling of the action of the Pasadena Department of the Superior Court, or any other Superior Court of this State, in the appointment of inheritance tax appraisers, and that said Ray L. Riley be requested to abandon the practice of paying political obligations by the making of appointments to positions as inheritance tax appraiser, and that he be requested to refrain from further attempting to usurp the powers of the Superior Court of this state; and

BE IT FURTHER RESOLVED:

That this matter be referred to a committee for the purpose of considering appropriate legislation to be presented at the next session of the State Legislature of the State of California, having to do with more efficient control of such practices; and

BE IT FURTHER RESOLVED:

That a copy of this resolution be forwarded forthwith to said Ray L. Riley.

# A New Suggestion About Choosing Judges

By Robert A. Morton, of the Los Angeles Bar

The open season for plans for the selection of judges has not been dampened by recent events. While great haste is not necessary, in view of the fact that the controversy originated in and about the courtrooms of the early Stone Age, and will no doubt continue as far into the future; nevertheless, the temptation to propose the final and successful method is strong.

At the outset it must be apparent that any attempt to display originality on such time-worn theme must result in failure. Where generations of eminent lawyers and jurists have had their say, and have left the question wide open, any further discourse must consist of platitudes. Moreover, we of the legal fraternity, as were our forbears, are only too familiar with the many aspects of the mechanics of Bar and Bench in a popular government and need no reminders of them.

### Aspects of Originality

In spite of which, I confidently have to offer a plan for selecting judges, and one that I believe has aspects of originality. In the first place, it straddles the elective and appointive systems and therefore inherits some of the strength and weakness of each. But since no method can ever produce perfect results, its merits, if any it may possess, depend upon the ratio of such strength to weakness. Secondly, the method of arriving at my scheme was **distinctly** original, in that the first step was to eliminate all proposals which were too obviously impracticable or impossible of attainment in the present state of public opinion, upon the theory that what is needed is a workable plan rather than a dream-child. Such process considerably reduced the available material. It was accomplished by applying to the subject matter the following findings of fact, or conclusions, if you prefer:

First: That the geography of the plan should be restricted to the place of need, namely the County of Los Angeles, as reform like charity might well begin at home.

Second: That a populace too diffused to elect good judges by the present method must also lack the ability to elect altruistic commissioners who would appoint such judges.

Third: That the electorate will not now, nor in the near future, relinquish the power of choosing its judges at the polls; wherefore, it follows that judicial campaigns, however inconvenient, must remain with us.

Fourth: That selection by Bar Plebiscite is futile in a politically minded organization divided in opinions and activities by numerous factions.

### The Only Remedy

The only possible remedy, therefore, had to relate to some plan of informing and influencing the voters—a plan that, by its sheer fairness and honesty of purpose, would win and hold public approval. The Bar Plebiscite, as it has been experimented with in this County, lacks the necessary quality of conviction, because the public at large has no great respect for the recommendations of a professional body which, in the nature of things, must be influenced by extraneous considerations, and many may therefore be regarded with suspicion.

But is there not a feasible means of directing popular attention to the relative qualifications of candidates for judgeships that can be made to function in a manner at once authoritative and convincing? Most certainly the people desire a competent Bench and will follow impartial leadership when the same is made known to them.

To that end, therefore, let the Governor, or the Supreme Court, appoint a lay commission or committee, to whom all candidates for election and re-election to Superior and Municipal Courts of Los Angeles County shall submit their applications and evidence as to qualifications. The duties of the commission shall be restricted to the collecting and collating of such material presented to it, and to seeking additional data when deemed desirable.

Prior to printing of the ballots let the above subject matter be presented to the Supreme Court, which body shall be empowered to investigate further if need be.

and thereafter to recommend, by a majority vote, one candidate as in its opinion best qualified for each vacancy. All that remains is to communicate the recommendation to the electorate by the simple and effective method of having printed on the ballots under the name of each favored candidate the words,

**"Recommended as best qualified by the Supreme Court."**

### Effect of Recommendation

I am confident that such form of recommendation would be equivalent to election at the polls in nine cases out of ten, if not in all ten, and yet the people would retain their prerogative to select their own judges, and to correct at the polls any unlikely abuse in the exercise of the power of recommendation. The plan can be made operative without a constitutional amendment, so I am informed.

We may safely assume that in considering qualifications the Supreme Court would be little moved by hearsay, applause or criticism, whispering campaigns, political labels, or the endorsements of professional radio lecturers. The members of that court are in a superior and commanding position to weigh the respective merits of candidates for judicial preferment, and must needs be deeply conscious of the demand for capable trial judges. Their attention would be directed to the elements of preparation, experience and temperament that make up what we call **judicial fitness.** We might even expect that the standard of such fitness applicable to the Superior Bench might be extended to the Municipal Bench. It has never been explained why a suitor with a claim under two thousand dollars should be entitled to any lesser degree of court service or judicial ability, than his fellow citizen whose demand amounts to a larger sum. Much could be said in this connection.

The stimulating result of such plan on the administration of justice would be immediate and favorable. Competent lawyer candidates for whom the vagaries of the Bar Plebiscite now act as a deterrent would cheerfully submit their candidacy to such respected and responsible body; the hand writing on the wall would be made apparent to unfit persons now on the Bench; the pernicious burden of appellate delay would be reduced through the more learned and efficient functioning of trial courts, and Bench and Bar alike would in short order be on the road to recover what has been lost in the way of public confidence.

Such are the main timbers of the plan which I respectfully submit to the lawyers of Los Angeles County. The suggested power of recommendation might also apply to appointments to the Bench by the Governor; indeed, the rumor is that our present Governor occasionally consults the members of the Supreme Court prior to appointments in this County.

In recent years the Supreme Court through the Judicial Council, and by its rule-making powers, has become a most welcome executive factor in our judicial system. The proposed right to recommend judicial candidates, which would in no way interfere with existing political prerogatives, would give to that Court a salutory supervisory power over the personnel of trial courts; it appears to me to be a logical additional function to bestow.

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## INGLEWOOD BAR ELECTS NEW OFFICERS

The Inglewood Bar Association announces the following officers for the ensuing year:

Vernon P. Spencer, President.
Frank Parent, First Vice-Pres.
Garner White, Second Vice-Pres.
Lester Luce, Secretary.
George Lawrence, Treasurer.

The following were elected trustees for the ensuing year:

Clyde Woodworth, Newcomb Condee, W. Wellington Farrow, A. F. Monroe, Chas. T. Woodbury.

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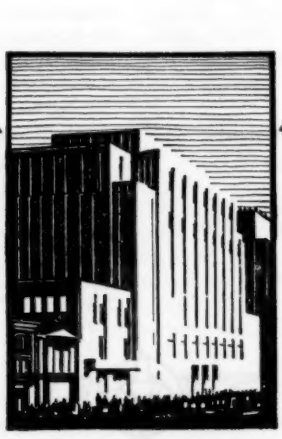

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# Federal and Judicial Control of Radio Broadcasting

By Warren Jefferson Davis, of the Los Angeles Bar

AMERICA'S coming of age so far as radio communication is concerned, has been attended by developments in the law of radio to such an extent that progress in the law has kept pace with a new and increasingly important scientific invention.

The California Legislature in 1929 provided that slander should be punished criminally as it is now civilly.[1] It was felt that radio broadcasting had created a new medium of giving to oral defamatory utterances a wider diffusion with the possibility also of greater damage.

### Defamation by Radio Broadcasting

The California Radio Act of 1929 involved no new principles. It merely applied what was already the law as to written slander. Similar legislation followed at recent sessions of the Legislatures in Minnesota, Ohio, Texas and New York.[2] The rules of criminal responsibility governing libel have now been extended to cover defamatory utterances or slander by radio.

In classifying defamation by radio as libel or slander, the distinction appeared to be based on the medium of transmission, slander being defamation through sound, and libel defamation through sight.

One of the most interesting questions decided by the Nebraska Supreme Court in 1932, in the case of *Sorenson v. Wood and KFAB Broadcasting Co.*,[3] was the affirmance by the court of an earlier ruling by the trial court that the defamatory utterance was libel and not slander.[4]

The *Sorenson* case is the first expression by an Appellate Court on the various questions raised, it being held that:

1. With regard to classification of defamatory utterances, publication of the utterances by radio are governed by the rules applicable to libel rather than slander.

2. The broadcasting station is jointly liable with the one who publishes defamatory utterances.

3. The use of due care by the broadcasting station is not a defense if the published utterance is defamatory. Those who publish defamatory utterances do so at their own peril.

4. Radio broadcasting publishers are not entitled to immunity any more than other publishers.

5. Considerable doubt exists whether privilege can be claimed by radio broadcasting stations in connection with the broadcasting of political speeches.

### Publisher Liable

Of primary importance in the *Sorenson* case is the enunciation of the principle that liability for the publication of defamatory utterances is governed by the law of defamation and not by the law of negligence. In the latter case the publisher would be liable only for failure to use due care. If from the facts in a particular case, it develops that defamatory utterances are published through the medium of the broadcasting station, it follows that the broadcaster and the broadcasting station as well are both liable under the law of defamation as in the case of any other defamatory utterances published other than through the medium of radio. The Supreme Court held that the trial court had erred in submitting the case to the jury "as if the law of negligence and not the law of defamation were the underlying basis for liability of radio broadcasting licensees for the publication of defamatory utterances by radio."[5]

1. Cal. Stats. 1929, c. 682, p. 1174, adding Paragraphs 258-260 to Cal. Penal Code.
2. Providing punishment for slander by radio, and imposing a penalty for the publication of libelous or slanderous matter by means of broadcasting.
3. *Sorenson v. Wood and KFAB Broadcasting Co.*, 243 N.W. 82.
4. See "Defamation by Radio," 66 U.S. Law Review, and the following cases cited in support of the principle: *Lamb's Case*, 9 Co. Rep. 59b; *de Libellis Famosis*, 5 Co. Rep. 125a; *McLaughlin v. Schnellbacher;* 65 Ill. App. 50; *McCoombs v. Tuttle*, 5 Blackf. (Ind.) 431; *Peterson v. Western Union Telegraph Co.*, 72 Minn. 41; *Miller v. Donovan*, 16 N.Y. Misc. 453; *Adams v. Lawson*, 17 Gratt. (Va.) 250.
5. See article by Vold, "Defamation by Radio," 2 Journal of Radio Law 673, summarizing briefs filed in the *Sorenson* case.

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5. See article by Vold, "Defamation by Radio," 2 Journal of Radio Law 673, summarizing briefs filed in the *Sorenson* case.

In 1929 the American Bar Association adopted a resolution instructing the Committee on Radio Law:

> "To oppose the enactment of any bill declaring broadcasting stations to be common carriers or to be subject to a common carrier obligation with respect to the transmission of communications."

### Not Common Carriers

With the decision of the *Sorenson* case, it is very readily apparent that broadcasting stations are not entitled to be classified as common carriers. The court rejected the contention of the broadcasting station that it was a common carrier of intelligence within the meaning of the Interstate Commerce Act.

The Supreme Court of Nebraska rejected the broadcasting company's claim of privilege based upon a provision in the Radio Act of 1927[6] and Order No. 31 of the Federal Radio Commission:[7]

> "We do not think Congress intended by this language in the act to authorize or sanction the publication of libel and thus to raise an issue with the federal constitutional provisions prohibiting the taking of property without due process or with payment of just compensation (Const. Fifth Amendment). This is particularly true where any argument for exercise of the police power and for any public benefit to be derived would seem to be against such an interpretation rather than to be served by it. So far as we can discover, no court has adjudicated this phase of the statute and order. We reject the theory. For the purposes of this case we adopt an interpretation that seems in accord with the intent of congress and of the radio commission. We are of the opinion that the prohibition of censorship of material broadcast over the radio station of a licensee merely prevents the licensee from censoring the words as to their political and partisan trend but does not give a licensee any privilege to join and assist in the publication of a libel or grant any immunity from the consequences of such action. The federal radio act confers no privilege to broadcasting stations to publish defamatory utterances."

The jury had been instructed by the trial court that if the owner of the broadcasting station acting in good faith had exercised due care that he was absolved from liability for the transmission of unprivileged defamatory utterances by a speaker making use of the broadcasting station. The court rejected this contention, however, stating:

> "It has often been held in newspaper publication, which is closely analogous to publication by radio, that due care and honest mistake do not relieve a publisher from liability for libel. In *Peck v. Tribune Co.*, 214 U.S. 185, 53 L. Ed. 960, Mr. Justice Holmes said 'If the publication was libelous, the defendant took the risk. As was said of such matters by Lord Mansfield, "Whenever a man publishes, he publishes at his peril".' In *Taylor v. Hearst*, 107 Cal. 262, 40 Pac. 392, where the published article was libelous *per se* but the publisher made a mistake in the initials and intended the article to apply to another person, it was held: 'Whether such publication was by design, or was the result of carelessness in setting the type, is a matter of no consequence so far as the question of actual damage is involved'."

### Censoring Material

The difficulty of examining in advance and censoring material to be broadcast, and the possibility that a speaker using the radio station may depart from the written manuscript submitted, would on first examination indicate that the rule of liability announced in the *Sorenson* case is somewhat harsh, and that a modified rule, relieving the broadcasting station of liability where due and reasonable care has been exercised to avoid defamatory utterances, would best serve the public interest. Otherwise the broadcasting station, to protect itself from liability for defamatory utterances, must enter into a contractural relationship with those purchasing time for radio broadcasting in order to relieve the broadcasting station from liability in such cases where due and reasonable care cannot be exercised.

### Federal Control—Does it Abridge the Constitutional Guarantee of Free Speech?

Responsibility for defamatory utterances by radio is very closely connected with the question of free speech. This question as it arises under the Radio Act has been met and judicially determined by the District of Columbia Court of Appeals, which recently

6. 47 U.S.C.A., Section 98.
7. Promulgated May 11, 1928, affording an equal opportunity to political candidates in the use of broadcasting facilities, and the prohibition of censorship of material broadcast.

affirmed the action of the Federal Radio Commission in cancelling the license of station KGEF of Los Angeles, formerly operated by R. P. Shuler. The Appellate Court upheld the Federal Radio Commission on every point raised by Mr. Shuler on appeal, denying Mr. Shuler's major contention that his constitutional right of free speech had been abridged.

In affirming the action of the Federal Radio Commission in cancelling the license of the broadcasting station, the District of Columbia Court of Appeals had this to say:

"In the case under consideration the evidence abundantly sustains the conclusion of the commission that the continuance of the broadcasting programs of appellant is not in the public interest. In a proceeding for contempt against Dr. Shuler, on appeal to the Supreme Court of California, that court said that the broadcast utterances of Dr. Shuler disclosed throughout the determination on his part to impose on the trial courts his own will and views with respect to certain cases then pending or on trial and amounted to contempt of court. Appellant, not satisfied with attacking the judges of the courts in cases then pending before them, attacked the Bar Association for its activities in recommending judges, charging it with ulterior and sinister purposes.

"With no more justification, he charged particular judges with sundry immoral acts. He made defamatory statements against the Board of Health. He charged the Labor Temple in Los Angeles was a bootlegging and gambling joint. In none of these matters, when called on to explain or justify his statements, was he able to do more than declare that the statements expressed his own sentiments. On one occasion he announced over the radio that he had certain damaging information against a prominent unnamed man which, unless a contribution (presumably to the church) of $100 was forthcoming he would disclose. As a result, he received contributions from several persons. He freely spoke of 'pimps' and prostitutes. He alluded slightingly to the Jews as a race, and made frequent and bitter attacks on the Roman Catholic religion and its relations to government.

* * *

"If it be considered that one in possession of a permit to broadcast in interstate commerce may, without let or hindrance from any source, use these facilities, reaching out, as they do, from one corner of the country to the other, to obstruct the administration of justice, offend the religious susceptibilities of thousands, inspire political distrust and civic discord, or offend youth and innocence by the free use of words suggestive of sexual immorality, and be answerable for slander only at the instance of the one offended, then this great science, instead of a boon, will become a scourge, and the nation a theater for the display of individual passions and the collision of personal interests. This is neither censorship nor previous restraint, nor is it a whittling away the rights guaranteed by the First Amendment, or an impairment of their free exercise. Appellant may continue to indulge his strictures upon the characters of men in public office. He may just as freely as ever criticize religious practices of which he does not approve. He may even indulge private malice or personal slander—subject, of course, to be required to answer for the abuse thereof—but he may not, as we think, demand, of right, the continued use of an instrumentality of commerce for such purposes, or any other, except in subordination to all reasonable rules and regulations Congress, acting through the commission, may prescribe.

"Nor are we any more impressed with the argument that the refusal to renew a license is a taking of property within the Fifth Amendment. There is a marked difference between the destruction of physical property and the denial of a permit to use the limited channels of the air."

Regardless of whether the rule of liability as announced in the *Sorenson* case becomes the generally accepted law on the subject, or whether a modified rule of liability in favor of the exercise of due and reasonable care on the part of the broadcasting station, a rigid control of licensing by the Federal Radio Commission and the exercise of care on the part of stations to examine carefully in advance material to be broadcast, with the right to reject and delete material which appears to be libelous, will result in supervision by broadcasting stations which will have a tendency to eliminate objectionable public utterances which could be classified as defamation by radio.

# The Juvenile Court of Los Angeles County

## RE-ORGANIZATION AND PROCEDURAL REFORM MAKES IT ONE OF LEADERS AMONG LIKE COURTS IN THE UNITED STATES. JUVENILE PROBATION DEPARTMENT CLOSELY LINKED

By Hon. Samuel R. Blake, Judge of the Juvenile Department of the Superior Court

**Anyone investigating juvenile procedure would early come to the conclusion that no juvenile court or probation department, however successful or efficient, could ever achieve permanent results without the active co-operation of the community. This belief led to the vigorous prosecution of the policy of establishing co-ordinating councils of community agencies for preventive work as well as to assist in the adjustment of the child with anti-social tendencies who had been before the Juvenile Court.**

UNLIKE other departments of our judiciary, the Juvenile Court stays the execution and prosecution of the general laws and puts into practice the provisions of the Juvenile Court Law. Section One of this law provides 13 subdivisions under which a person under the age of 18 has a right to present his cause to the Juvenile Court and proceedings are stayed until the Juvenile Court acts. Between the ages of 18 and 21 it is discretionary whether the court will, after investigation, accept a transfer of a criminal case. The petition on behalf of the minor may be filed by any person who feels that a minor within his knowledge comes under the provisions of the law, or it may be filed by the child itself. There is, however, a regular procedure for the determination of the facts in the case by investigation of the probation department before the petition is actually filed.

### Results of Survey

To carry into effect and insure that the spirit of the Juvenile Court Law be adhered to very closely, a survey of the Los Angeles Juvenile Court was made in 1927, with funds provided by the Los Angeles Rotary Club. Conducted under the direction of Francis H. Hiller, Field Representative of the National Probation Association, lawyer, and nationally recognized psychologist, the survey led to the uncovering of many needed reforms in court procedure and to the need for a re-organization of the Probation Department in the Juvenile Court. This survey was instigated by Judge Robert H. Scott, my predecessor, and continued by me until today, when a large part of the program suggested has been carried to fulfillment. There remains, however, a large task yet to be completed. This is due principally to the fact that the re-organization assumed greater proportions and covered a wider field than originally contemplated in the survey.

### Large Saving Effected

During the past three years, the spur of public economy was applied to the work in order to achieve the desired improved results, despite curtailment of appropriations and mounting costs. This policy is in direct line with the popular demand for reduction of governmental costs without unnecessary sacrifice of benefits intended by the law. I will not in this article attempt to enter into a general discussion of the financial aspects. Suffice to say that by re-organization the Court turned back out of appropriated funds, the following: In the fiscal year 1929-30, $202,678.00; in the fiscal year 1930-31, $210,801.00; in the fiscal year, 1931-32, $77,141.00. These amounts were saved out of continued reduced appropriations and likewise with improved results in juvenile conditions in this county from the standpoint of juvenile work.

### Jail Detention Detrimental

One of the first problems attacked was the detention of juveniles in the County Jail. There had previously been many complaints from social workers that boys were detained in the jail for unnecessarily long periods of time. Not only was this detrimental to the mental and physical

well being of the young offender, but expensive to the taxpayers. Introduction into the Juvenile Court by detention in jail is one of the worst ways of entering into the juvenile program and should only be used when absolutely necessary.

Some solution would have to be found which would not defeat the purpose detention is required to fulfill. Once a young offender was apprehended, it was obviously impracticable to release the child to the custody of relatives or parents, or even friends, who had already demonstrated their failure to have the proper control over the person involved. The seriousness of some of the charges would naturally not permit placing him in Juvenile Hall Clinic detention home, except in some instances. Then too, boys detained ordinarily in the county jail are so much older than the children of preadolescent age detained in Juvenile Hall Clinic that, for the protection of the younger children, this plan would not be practicable.

To meet the contingency it was finally decided to place one person in charge of all cases where it was necessary to detain a child. This person, known as Detention Officer, was a deputy probation officer. His principal duties are to carefully scrutinize all admissions to the county jail and juvenile hall of juveniles, with the object of detaining only those whose cases actually warranted such detention, and then to see that the case was placed on the calendar within as short a space of time as practicable, usually within a week, not exceeding seven court days in which court is in session.

### Careful Supervision

This reform has resulted in a reduction of the space allotted juveniles in the county jail from capacity of 72 to that of 20. Aside from the monetary saving involved in the long detention of juveniles, there is a distinct advantage to the boy himself. His mental attitude, so necessary to a proper adjustment to normal living, does not suffer from long confinement in jail atmosphere. Detention in Juvenile Hall receives the same careful supervision, and when the detention officer finds a boy or girl whose case has not been placed on the calendar in at least a week from the time of detention, or if he or she has not been visited by the probation officer during that time, the officer concerned is immediately notified by the detention officer. Far-reaching results of a beneficial nature have been obtained by this procedure.

### Coordinating Councils

Aside from the matter of detentions, other improvements and re-organization were effected along other lines. Principally, these are, and deal with, County Forestry Camp No. 10, establishment of Co-ordinating Community Councils, establishment of the Traffic School, expediting of Court procedure and Re-organization of the Juvenile Probation Department through the following means:

Appointment of a full time probation officer as head of the Probation Department;

Personnel changes;

Apportionment of responsibility through a well-defined chain of command;

A more equitable division of work;

Division of County into districts, assigning definite personnel to these districts.

Establishment of a division of complaints and investigation to handle cases which can be settled without filing a petition in Juvenile Court, and

Functional changes and assignment of specialized work.

### Court Days Assigned

Instead of having cases handled by various probation officers come up on the calendar indiscriminately without regard to the unnecessary amount of time involved, the various divisions of the juvenile probation department now have certain days assigned to them in court. This releases a larger number of probation officers for important field work and supervision of probationers in their own homes.

Girls' cases are heard by Mrs. Margaret Pratt at Juvenile Hall Clinic and written findings and recommendations made. From these written findings the court approves or disapproves the plan recommended. The boys' cases are handled by the Court with references to the Commissioner or Referee, in the cases of less importance. Cases are heard on the day set and each case is completed upon the day set for hearing.

Procedure involving serious cases of boys over 15 formerly meant that the youths involved would be committed to

the Preston School of Industry. Many of these boys have been rehabilitated without the necessity of sending them to a state school through the establishment of a camp for boys, known officially as Forestry Camp No. 10, located in the San Dimas Canyon. This innovation marks a new departure in the treatment of certain types of cases and was recently the subject of a national magazine article.

### A Typical Case

A typical instance, for example, might be the case of a boy, age 17, who had committed automobile theft. Under the Juvenile Court Law a petition would be filed in his behalf under Subdivision 13, Grand Theft. The thefts by the boy definitely established, and if the Court decided the boy a fit subject for consideration of the Juvenile Court he would be declared a ward of the court. Instead of committing him to the state school during minority, involving an expense of $20.00 per month to the county and a larger sum per month to the people of the state, the boy is granted a stay of execution and permitted to go to the Forestry Camp. Here he is given, not only disciplinary training, food and adequate shelter, but gainful employment. Through the co-operation of the County Forestry Department, work is provided, such as building fire breaks, roads incidental to the camp, and other work for which appropriations cannot legally be made. For this work the boy is credited with 50 cents per day. In the case of local boys, this money is given to him through the probation officer or the parents, to be expended for clothing and other necessaries, or for restitution, in cases where damage to property is involved.

In the case of vagrant boys from other states, the money is used to defray their expenses in traveling home. **Heretofore, when boys were sent to their respective homes, the taxpayers of the county provided the funds and sometimes the boys were committed to state schools at an enormous cost. The many advantages of this plan are so obvious that other counties and communities throughout the nation are adopting plans along similar lines.**

### Traffic School

Another institution established that has achieved highly beneficial results at a comparatively negligible cost, is the Traffic School. Young offenders who violate the vehicle laws, principally through carelessness or ignorance, are sent, with their parents' consent, to this traffic school for a period of four successive Saturday mornings, or until they receive a certificate of completion. A systematic course of instruction is given in the provisions of the vehicle act and on the law in general. Formerly, petitions were filed in these cases and the change in procedure has not only saved large amounts of money, but has carried to successful fruition the theory that education is the final solution of the problem of preventing law violations, rather than fines which the parents always pay.

A further step in this program would be to require all minors to obtain a certificate of completion from this traffic school before the case is closed; if it is not obtained then the matter could be called to the court's attention by petition. It would also inculcate in them respect and observance of all law.

### Community Responsibility

**Without question, the responsibility of the child belongs to the community. The lack of necessary facilities for living a normal life has caused many a boy and girl to run afoul of the law who otherwise would have remained happy in the pursuit of the ordinary activities of childhood.**

In the matter of assisting children who have been before the Court to adjust themselves to normal life, the procedure involved is simple in its appplication. A study is made of the particular child's needs and the various character building, and other agencies believed necessary, are asked to step in with a constructive program. Adequate play, study and work gives the child something to do, and well directed activity of a child's efforts in most cases achieve the desired results. The physical well-being and home conditions of the child is also carefully analyzed and provided for.

There are now in active operation 15 such community co-ordinating councils and 15 in process of organization.

### Probation Department

No procedural reform in the Juvenile Court would be effective without a co-ordinating re-organization of the Juvenile Probation Department. Prior to the ap-

pointment of the present probation officer there was no active full time head of the department. The futility of trying to accomplish results without executive direction became apparent very early and unanimous agreement among all interests was that the prime need was for the appointment of an executive head. This resulted eventually in the appointment of Kenyon J. Scudder who has since put into effect the Court's plan of re-organization.

Another change in personnel of importance in establishing a definite chain of command was the assignment of the specific duties of personnel director for the probation department in order to increase the personnel efficiency of each deputy probation officer and to manage administrative personnel matters satisfactorily.

### Divisional Director

The County was then divided into five districts and special branches based on race or nationality, and each placed in charge of a divisional director with a sufficient number of deputy probation officers. The case load was then more equitably divided and much better supervision is possible. Adequate supervision in the home and on probation is the keynote of successful probation work as applied to juveniles.

Another procedure which prevented the filing of many cases, was the establishing of the division of complaints and investigation. Before a child is actually filed on, the facts of the cases are carefully investigated and in many cases it is possible to settle the matter without bringing it before the court, or in some cases, by referring the case to another agency for which the case might be more applicable.

In this brief discussion, very little mention has been made of legal terms, of decisions, or other judicial pronouncements. Indeed, the entire structure of the juvenile court tends to simplicity and to diagnosis of the causes of anti-social conduct or behavior of the child, or arriving at the causal factor thereof and the correction of these causes. These causes can only be corrected by bringing to bear the facilities of the community upon the child in a co-ordinated well planned program, of which the main spring is supervision and following the plan as outlined by the court.

### Home Conditions Blamable

Sixty percent of children's troubles are directly attributed to home and home conditions such as improper supervision, no supervision, step parents, broken homes, etc. Therefore with supervision in the home, under a definite plan, these factors are minimized and the growing youth is bent in the proper direction.

After the court has made its judicial determinations the Juvenile Judge then sits as a doctor of social welfare administering to the social needs of the child. For his guidance he has child guidance clinics, psychiatrists, physicians and surgeons, trained personnel upon which to call for advice in these matters and such an involved procedure too far reaching to consider here.

Los Angeles County, drawing as it does, new streams of population to it annually, cannot afford to ignore the necessity of providing for the future in the light of past experience. The fields of probation administration and its many specialized branches have advanced so rapidly during the past few years, that, to keep pace with new developments, constant initiation of new practices must be made, wherever proven practicable.

The boys and girls of tender, adolescent years who are forever struggling with the complexities of modern life are entitled to all the privileges and benefits which society can offer, both material and spiritual. As new methods develop and offer hope for fulfilling society's obligations to its children, they will be adopted.


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# "The Primary is Bane of American Politics"

## IT HAS COMPLETED THE RUIN OF THE ELECTIVE METHOD OF CHOOSING JUDGES. SO SAYS EMINENT MICHIGAN LAWYER-JOURNALIST

By Stuart H. Perry*

**"The election of judges is utterly illogical and inexpedient, as unsound in theory as it is mischievious in practice."**

So said Stuart H. Perry of the Michigan Bar in a recent address before the American Bar Association. In the light of the late experience of voters in Los Angeles County in choosing 25 judges of the Superior Court from a confusing array of candidates, Mr. Perry's remarks should be peculiarly interesting to this community.

Mr. Perry continues:

**"The election of a judge is further repugnant to any sound conception of the nature of his office, because the sole test of his fitness should be his merits as a jurist; whereas the test of electoral choice is the candidate's popularity, which may depend upon anything and everything except judicial merits. There ought to be no such thing as a popular judge in the political sense of the word. Of course he should be a gentleman, and his courtesy, sympathy and other personal traits may properly win the personal esteem of those with whom he comes in contact. But with the public at large a judge should be popular only in the sense that his ability and honesty are recognized.**

**"Unfortunately no degree of intelligence and sincerity on the part of the electorate can make the election of a judge a fair test of his qualifications. To the average voter the processes of the law are, and always will be, as much a mystery as the methods of surgery or engineering. Most voters know nothing of the candidate's qualifications except by general reputation, which means the casual impressions that he gathers from other individuals who are as ignorant of legal matters as himself. And in candor it must be added that many do not care, and that very few will take any pains to make inquiry.**

### Ruin of Elective Methods

**"The primary, which in my opinion is the bane of contemporary American politics, has completed the ruin of the elective method of choosing judges. It has carried the evils of that method to their ultimate acme, and we can consider other plans with the assurance that none could be worse.** Under the old convention system, in which parties were more effectively organized, it is true the judge was part of the party machine. He was subject to the normal influences of party politics, which conceivably might impel him sometimes to favor a partisan view or a party leader. But that, at the worst, would be on rare occasions. He was not incessantly under the temptation to play for personal popularity. The party label, which almost invariably determined his election, at least had the good effect of removing him largely from the individual scramble for votes. His interests were identical with those of his party as a whole. He and his party went up or went down together, regardless, as a rule of either his personal popularity of his personal fitness.

**"Under the primary system, on the other hand, party responsibility and discipline have greatly weakened. The elective judge must win his nomination from a field of rivals, and in that competition he must rely solely upon his vote-getting power. Instead of being subject to limited temptations, he becomes subject to all the temptations that beset political office-seekers. Every friend counts, and every enemy. He is impelled to seek favor wherever it can be had, and to welcome any and every influence that is expressed in terms of votes. He cannot ignore the cheaper arts of politics. He must be a joiner, a mixer, a handshaker; he must do political speaking and political eating; he must show himself at opening games, farmers' picnics, Turn Verein suppers,**

*The author is a member of the bar of the State of Michigan, publisher of the Adrian Telegram, a director of the Associated Press and a member of the Michigan Judicial Council.

**and look in at the annual ball of the Ninth Ward Repubocrat Club.**

"The effect of all this is to aggravate to the utmost the evils that naturally attach to the popular election of judges. To a greater extent than ever it invites mere politicians and discourages dignified and high-class aspirants. It cheapens the office, confuses the public, brings unworthy men to the bench, and—worst of all—it intensifies the pressure of vote-hunger upon judges not only during campaigns but at all times.

### Eliminate Popular Choice

"In seeking a way to rescue the bench from politics, all efforts should be directed inflexibly toward the one objective of eliminating everything in the nature of a popular choice between candidates. Any compromise with that principle leads to palliative devices which might work more harm than good. Makeshift reforms give a false sense of improvement, which keeps the basic evils alive and makes genuine reform more difficult.

"Among such palliative devices is the so-called nonpartisan election of judges. The evil lies in the fact, not in the time or manner, of election — in the fundamental idea of making popularity with the crowd a test of judicial fitness. Holding separate judicial elections, and printing the names of candidates without party designation, is merely a partial substitution of personal politics for party politics. Either one, or any combination of the two, is wholly objectionable.

### Basis Recommendations

"In the same class must also be placed all plans whereby some group or body should make selections from a field of candidates and recommend certain ones to the electors. It is good only in as far as it reduces the number of candidates; the vicious principle of the electoral race still persists. **Even the indorsement of an integrated bar association, which would be the best of all, is open to that objection. It also would only partly reflect the views of the bar, because the bar's recommendations would have to be made from a field of self-starters, of whom perhaps none would be fully satisfactory. The same objection applies to indorsement from civic bodies of all kinds."**



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# Bookkeeping for Law Offices

By Daniel L. Eversole

WHAT actually constitutes the theory of debit and credit, is generally perplexing to the lawyer because he has been told and keeps in mind the one fact that all correctly kept books must **balance.**

One must not forget that in accounting, as well as in law, the desired answer to the question involved may first be considered. The actual balance is only mechanical, and is brought about regardless of the number of questions involved. This point is further proven by reason of the fact that no two accountants will ever arrive at the same figure of profit for any one company.

It has been found that no two systems for operating the business of a law office are similar. However, it would be to the advantage of all law offices if some uniformity could be reached, and it is with this thought in mind that I dwell on two or three subjects and show the mechanics of the figures as they pass through the books.

### Four Groups of Accounts

To know bookkeeping in its general sense, one needs only to keep in mind four groups of accounts — assets, liabilities, income and expense. All entries revolve around these four groups. Debit and credit mean that we enter in the left hand column all debits or amounts which affect things coming in to us, and as to credits we must, in order to balance, enter in the right hand column similar amounts affecting all things going out from us. The fact is that we either make a profit or incur a loss, and it only remains a game of "cross-out" for the bookkeeper, using the words "debit" and "credit." Where we have one "X" we must also offset it with another "X," and in the end the books balance, showing a debit for a loss or a credit for a profit. Profit is reflected in increasing some asset or decreasing some liability. Loss is the reverse, for every expense reflects a decrease of assets or an increase of liabilities.

### Basis for Taxation

The Federal Tax Laws provide for paying one's tax on a cash basis as long as this basis is consistent year after year. Most law offices which have established accounting systems use this policy. Income is considered as being only cash received from fees. It must not be confused with other cash received, such as advance costs repaid by clients.

The actual entries in the books are not complicated in this instance, because only one additional account is required to bring about this difference. When the fee is **set,** it is posted to the client's accounts receivable ledger and becomes an asset. The contra-entry is to credit the new account **"uncollected fees"** which is a liability known as **"deferred income."** When the fee is paid, it becomes **income,** which is the credit offset by a debit to **"uncollected fees."** The money received goes through the regular channels of being debited to the bank account and credited to the client's account in the ledger.

### Trustee Accounts

In the canons of ethics of the American Bar Association, it is ruled that all funds which an attorney receives from outside sources wherein he is acting in a fiduciary capacity, should be reported promptly and except with the client's consent, should not be commingled with his private property or used by him.

The ruling requires a considerable number of accounting entries to be properly carried out in the books wherein an attorney or law firm has a great number of clients. This work may be lessened by establishing certain set rules in the practice. First, to request sufficient advance costs so as to eliminate borrowing from the regular bank account in order to pay clients' bills. Second, to refuse to advance any costs unless the client has advanced the money. When there is a sufficient credit to a client's account, it is only necessary to write one check on the trustee bank account. When there is not sufficient credit, it is unfair to borrow from another client's account.

Regardless of these expediencies, it is necessary to carry an **exchange account** in the general ledger. Two cash books are necessary, and in most instances two ledger sheets for each client. In following through the entries in these books, I shall use an example to reflect the use of debit and credit.

Client A pays in to the lawyer $100.00, $50.00 of which is to be used as advance costs and $50.00 to apply on the fee. The payment is made by one check. Therefore, the total amount is debited to the trustee bank account and the money deposited in the bank. The credit goes to the client's account by recording $50.00 in the costs received column, and $50.00 in the fees received column. Provided the $50.00 fee is needed to keep up the regular bank account, the procedure then is to draw a check on the trustee bank account for $50.00 and deposit it in the regular bank account. The entry here is a debit to the regular bank account and a credit to the exchange account. The entries of the trustee check will be a credit to the trustee bank account and a debit to the exchange account. In this manner, the exchange account is balanced and no unnecessary entries are shown on the client's accounts receivable account.

### Treatment of Advances

Wherein possible, it is a good policy to leave all advance fees in the trustee bank account until the case or matter is finished, or at least the end of the current month. By doing this, all the accounts may be gone over and one check drawn for all the various amounts due to be deposited in the regular bank account. This, likewise, is a better means of eliminating the borrowing from one client's account to another. Merely pay all costs to the courts out of the regular bank account, and whenever necessary check through the clients' accounts and draw one check from the credit balances which are available. To be sure, this policy means that the attorney will be advancing considerable more money unless he makes rigid requests from his clients, but it is surely the easiest way to be protected in the records and keep within the rules.

### Income

The conversion of gross income into cash income may be easily accomplished, provided the cash disbursement and receipt books both regular and trustee, are made up with two columns; one for costs and one for fee entries. The proper reposting of these entry totals further provides the manager with a monthly analysis of what he has invested in costs for his clients.

In reducing gross income to cash, it is necessary to use two income accounts, one **deferred** and one cash. The **deferred** account will set aside at the end of the year the amount of unpaid fee charges, not only in accounts receivable, but also in stocks, bonds and notes receivable, which have been taken in as fees and remain unpaid.

The taxable income supplemented with all schedules, may be shown in this manner:

| | | |
|---|---|---|
| Deferred Income at beginning of year | | $ 85,000.00 |
| Gross Receipts for current year | | 60,000.00 |
| Total to reduce to cash | | $145,000.00 |
| Deduct: | | |
| Uncollectible fees and Capital Adjustments (debits) for losses | $10,000.00 | |
| Deferred Income at end of year | 60,000.00 | |
| Total | | 70,000.00 |
| | | $75,000.00 |
| Capital Adjustments for other realized Profit (credits) | | 5,000.00 |
| Cash income for year | | $80,000.00 |

The capital adjustment account is carried in this set-up so as not to cause a fluxation in the regular capital of the firm until the end of the year. It should carry such items as collections from the accounts written off the books in prior years (credits), and refunds on accounts wherein profit has been accepted in prior years (debits). This may also apply to the purchase, sale or exchange of stocks, bonds, furniture and fixtures, or notes and accounts payable wherein the current year should not reflect the transaction from a profit and loss angle.

Under the new ruling of the Federal Income Tax Law, the treatment for losses from sale of capital assets continues unchanged and such losses are deductible from all other sources of income, subject of course to the 12½ per cent tax limitation. Losses from sales or exchanges of stocks and bonds taken in during the current year or the one year preceding, are allowed as deductions only to the extent of profits made from similar sales and exchanges.

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